PETITIONER'S EXHIBIT "A"

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Argued: November 6, 1974
November 19, 1974

"Unpublished Order"
Not to be cited,
per Circuit Rule 28.

Before

Hon. LUTHER M. SWYGERT, Chief Judge
Hon. ALBERT B. MARIS, Senior Circuit Judge*
Hon. WALTER J. CUMMINGS, Circuit Judge

DONALD P. WRIGHT,
Plaintiff-Appellee,

Appeal No. 74-1106 vs.

JOHN J. TWOMEY, et al.,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 73 C 68
Philip W. Tone, Judge.

ORDER

Plaintiff Donald P. Wright brought suit against Warden John J. Twomey and various members of the staff at Stateville Penitentiary for deprivation of his constitu-

* Senior Circuit Judge Albert B. Maris of the Third Circuit is sitting by designation.

tional rights. Suit was brought pursuant to 42 U.S.C. § 1983 alleging that plaintiff had been subjected to cruel and unusual punishment in violation of the Eighth Amendment. Specifically, it was alleged that Wright suffered from malabsorption syndrome, an inability to derive adequate nutritional benefit from normal amounts of food, and that while at Stateville he was deprived of prescribed medication and dietary supplements made necessary because of this condition as a part of disciplinary disposition. It was further alleged that each of the defendants was directly involved in and responsible for this disciplinary action and that as a result of this deprivation, Wright was rendered ill for a period of approximately ten days. There is evidence in the record to support each of these allegations.

The district judge found that deprivation of proper medication and diet had occurred, that such a deprivation constituted cruel and unusual punishment in this case, and that the defendants were therefore liable, jointly and severally, in the amount of $500. As to Warden Twomey, the district judge found that sufficient notice of Wright's condition existed to require him to take some action to avoid the dietary and medical deprivations which occurred here and that his failure to do so constituted sufficient direct involvement in the ultimate deprivation to support liability independent of the doctrine of respondeat superior.

We affirm the judgment below. The factual determinations which support this judgment are not clearly erroneous, and there is ample authority for the proposition that deprivation of essential medical or dietary care constitute cruel and unusual punishment. *Thomas* v. *Pate*, 493 F. 2d 151, 157-59 (7th Cir. 1974), *Sawyer* v. *Sigler*, 445 F. 2d 818 (8th Cir. 1971).

AFFIRMED.

PETITIONER'S EXHIBIT "B"

THE COURT: What I am about to say may stand as my findings of fact and conclusions of law.

Sometime in 1972, Donald Wright, the plaintiff, commenced an action in this court under the caption, Donald Wright, plaintiff, versus Department of Corrections Hospital, Doctors, Pharmacists, Warden, defendants, No. 72 C 2281.

In his complaint he alleged that he suffered from a physical condition resulting from the resection of some 65 per cent of the small intestine, which created a short bowel syndrome, otherwise known as a malabsorption syndrome, and that he had not been receiving proper medication and diet for his condition from the prison authorities.

Because it appeared from the papers that there might be some possibility that the plaintiff's health was being adversely affected, I ordered an expedited hearing and held that hearing on November 3, 1972. At the hearing the prison officials testified and Warden Twomey himself was a witness.

I entered findings of fact and conclusions of law following the conclusion of that hearing on or about December 22, 1972. Those are marked, together with the minute order, dismissing the complaint as Plaintiff's Exhibit 1. Although the findings and conclusions were entered at the time I actually announced my ruling, it is my recollection, although I do not have the transcript on November 3rd at the conclusion of the hearing.

At the conclusion of the hearing I said to the prison officials that I had concluded that Mr. Wright had not suffered physically by reason of any denial of diet or

medication while he was in prison, and in reaching that conclusion, incidentally, I relied on the report of the physician who had examined Mr. Wright shortly before the hearing, a Dr. Rudolph W. Roesel, whose report to me, dated November 9, 1972, appears in the record. I cannot presently account for the fact that that is dated November 9 and a hearing was held on the 3rd. It may be that the hearing was in two installments and I announced my decision on the later one, although I am quite sure I had Dr. Roesel's opinion before me at the time of the hearing and at the time I reached my decision that Mr. Wright had not suffered any physical deterioration as a result of denial of diet or medication during his imprisonment.

I also recall that at the hearing I had admonished the prison officials to be sure that Mr. Wright received adequate diet and adequate medication for his condition during the remainder of his period of incarceration. Notwithstanding that admonition and the assurances I had at the time from the prison officials no more than a few weeks elapsed before Mr. Wright was sent to the Detention Hospital with the direction that he be placed on isolation rations.

The evidence shows that on December 1, 1972, at about eleven o'clock he became involved in some kind of an altercation with another inmate named Hoffman, and that the prison official in charge of the premises where that altercation occurred made an Inmate Violation Report to the Disciplinary Committee, which is Plaintiff's Exhibit 4. That report was immediately placed before the committee and that very day Mr. Wright was taken before the committee and a hearing was held with respect to the incident.

It appears to me that the hearing was held in compliance with the then existing Administrative Regulations of the State of Illinois Department of Corrections, Adult Divi-

sion on the subject of disciplinary procedure. A copy of those regulations appears in evidence as Defendants' Exhibit 2.

While those regulations would not appear to meet the present standards as enunciated in a decision since that time, those were the regulations in effect at the time this hearing was held. They were later supplanted by Defendants' Exhibit 3, which, in turn, was supplanted by Defendants' Exhibit 4, but we need not concern ourselves with the later regulations.

The Disciplinary Committee accepted the facts as stated in the report and placed the plaintiff, Donald P. Wright, or ordered him placed in isolation for ten days and recommended transfer and also provided for his isolation rations. That appears from Plaintiff's Exhibit 4.

There are two versions of the report of action by the Disciplinary Committee. There is, in addition to Plaintiff's Exhibit 4, a copy of which was given to Mr. Wright, Defendants' Exhibit 5 which on the front is a carbon copy of Plaintiff's Exhibit 4. Plaintiff's Exhibit 4 is stamped "inmate's copy." On the back of Plaintiff's Exhibit 5 there is written in somewhat different handwriting from Plaintiff's Exhibit 4 the same statement with respect to accepting the facts as stated in the report, and then the words "placed in Detention Hospital on isolation rations ten days and recommended for transfer." The words "in Detention Hospital" appear to be inserted and the word "rations" is inserted after "isolation."

So it appears clear that the Disciplinary Committee consisting of Lieutenant Trapp, Officer Jones and Counselor — I'm sorry, it's Lieutenant Sharp, Officer Jones and Lieutenant Trapp, directed that the prisoner be placed in the Detention Hospital with isolation rations.

They apparently at some point recognized that he should go to the Detention Hospital rather than isolation because of his condition, but they apparently persisted in their direction of isolation rations for the prisoner.

He was taken to the Detention Hospital, and apparently received some food late that day, but he apparently missed his midday meal by reason of the fact that the altercation took place just before he was supposed to have it, and then he was occupied with the hearing and the aftermath until sometime in the afternoon when he went to the Detention Hospital, and he received something to eat that day but he did not receive his regular ration.

Now at the time this incident occurred the defendant Dr. Venckus had prescribed for the plaintiff a diet of six meals a day plus the dietary supplement Portijin in the amount of 67 ounces of Portijin, and also Lomotil.

The evidence is in conflict as to the diet of the plaintiff during the time he was in the Detention Hospital. The plaintiff's own testimony is confusing on that subject. He said, as I pointed out to counsel during the argument, first that Dr. Wilson came to see him on the Monday after the Friday he was incarcerated, which would have been December 4, and then later in his testimony he said Dr. Wilson came around on Thursday, which would have been December 7.

The testimony of the defendants' witnesses is characterized by a lack of specific recollection, but one thing is clear, and that is that he was given not six meals a day, but three meals a day, and at most he was given meals that were in somewhat greater quantity than the meals that would have been given to an ordinary prisoner.

I am satisfied that at least during the period Friday until Monday he received something less than ordinary

prison fare. That is perhaps explained by Sergeant Simpson's departure for his holiday, for his weekend holiday, at about three o'clock on Friday afternoon, shortly after Wright arrived at the Detention Hospital. Lieutenant Simpson, of course, was the keeper in charge of the hospital, and apparently Mr. Wright received some food that day but went through the weekend without, certainly without diet and the supplement that Dr. Venckus had prescribed for him.

Apparently conditions improved somewhat after the weekend, but I find from the evidence that during the ten days he was in the hospital he did not receive the six meals a day and the dietary supplement and the medication prescribed for him by Dr. Venckus or a substantial equivalent of the diet, the dietary supplement and the medicine. He apparently received some medication, but at least during the weekend the confusion that attended his diet probably attended the medication.

I think that notwithstanding the fact that the prison officials had ample notice of Mr. Wright's condition and his concern about his own health, which may or may not have been neurotic or psychotic, they did not pursue the matter and make sure that he received the six meals a day, and the rest of the special treatment that he was supposed to get in view of his physical condition notwithstanding, incidentally, that I discussed that matter with him at the hearing when they were up here and they assured me they would watch it, and I am sure they in good faith intended to watch it, but as a result of this disciplinary incident his physical condition was lost sight of and matters were allowed to slide for several days without his receiving the diet supplements and, at least for part of that time, the medication he was entitled to and that was necessary in order to assure his continued health.

I am satisfied that he did not suffer any permanent physical impairment as a result of that deprivation.

His weight, during the period in question, ranged from 148 to 151 pounds between the time he was incarcerated on March 24, 1972, and the approximate time of the hearing before me in November of 1972.

In March of 1973 his weight had dropped about ten pounds to 140 pounds, and it was up to 153 pounds, five pounds more than he weighed when he entered the institution, at the approximate time of his discharge on June 6, 1973.

Whether or not the drop between November and March from 151 pounds to 140 pounds was attributable in whole or in part to the deprivation he suffered while in the Detention Hospital is not shown by the evidence.

The evidence does show, however, that while he was in the Detention Hospital he did suffer symptoms that would be expected, and Dr. Venckus acknowledged they would be expected, from the presence of the malabsorption syndrome and the absence of the appropriate diet supplement and medication. That is to say he experienced in some degree nausea, vomiting and diarrhea, and that was caused by the fact that he was denied the regimen which Dr. Venckus prescribed for him.

Now I think all of the prison officials who are left in the complaint were involved in one way or another. Ordinarily I would not have held the warden on the theory respondeat superior, but he was in the courtroom, I can take judicial notice of that, and we discussed Mr. Wright's condition and the need for carefully watching the situation, and he was well aware of it and in my presence assured me that it would be properly taken care of. I think under those circumstances his involvement is suffi-

cient so that he should be held liable along with the others without resort to the doctrine of respondeat superior.

I hold also liable Dr. Venckus, because he received notice on December 2 that the plaintiff had, for disciplinary reasons, been placed into Detention Hospital on isolation rations, and I refer to Defendants' Exhibit 10, a memorandum from Lieutenant Sharp and Sergeant Simpson dated December 1, 1972, a copy of which went to Dr. Venckus. Dr. Venckus has absolutely no recollection of the incident and no recollection of what was done with Mr. Wright.

I should have thought that prison officials who had come to court to testify a few weeks earlier would have seen to it that when an incident like this arose the doctor's prescription would have been faithfully carried out while the prisoner was undergoing disciplinary confinement and that an appropriate record would be made so that it could be established that the assurances the prison officials had given the Court were carried out. That was not done.

We are at the disadvantage at this hearing of having prison officials who remember no more about this incident than one would expect if it had occurred several years ago, and they had had no reason to believe that litigation would result from it. A possible exception to that is Officer Jones, who had some recollection of the incident and to some extent Sergeant Simpson, who had some recollection of the matter, but who could not say at first-hand what had been given the prisoner while he was not present.

Not so far as liability is concerned, I find liability on the theory that the deprivation of proper medication and diet while the prisoner was incarcerated deprived him of Eighth Amendment rights. I do not find that there was

a due process violation by reason of the procedure at the hearing, because the regulations then in effect were, so far as the evidence shows, believed in good faith to be in conformity with Constitutional requirements by the officials who conducted the hearing.

Now turning to the matter of damages there is very little for the Court to go on. I am satisfied — I say I am satisfied — there is no evidence from which I could find that the plaintiff suffered any physical permanent impairment, so what we are talking about is a period of discomforture and, I suppose it would be proper to characterize is as an illness for a period of ten days, more or less. At the latter part of the ten days the situation got better. As I understand it, there is no contention that he got his six meals a day during any part of the ten days, but at least during the latter part he got more food and suffered less.

I think Mr. Moritz is right that it would not be inappropriate for the Court to assess exemplary damages under 1983 under proper circumstances. I do not think that in this case any of the prison officials acted wilfully. If they had, I would be disposed to assess some substantial exemplary damages. I think they acted with gross negligence, knowing of his condition, and they were charged with knowledge of his condition. The Disciplinary Committee recognized it when they posted him to the Detention Hospital but left him on isolation rations, and Sergeant Simpson said he knew of it, and Dr. Venckus of course knew of it and Warden Twomey was here in court and he certainly knew of it. They all knew of it, and I think that they were all guilty of varying degrees of gross negligence in allowing a situation to develop in which he was put into detention and not properly fed.

I am going to assess damages in favor of the plaintiff in the amount of $500, which I think is appropriate in view of the length of time involved and in view of what, so far as I can determine from the evidence, was the amount of pain and suffering involved, and I have in mind in fixing that figure, of course, the fact that there is, the plaintiff did not suffer permanent injury. If he had, the amount would have, of course, been larger.

Judgment will be entered accordingly in favor of the plaintiff and against the defendants in the amount of $500.

MR. MORITZ: Thank you, your Honor.

MR. LEVAD: Could you clarify one thing, your Honor.

THE COURT: Yes.

MR. LEVAD: Is that against all the defendants?

THE COURT: That is against all the defendants and the judgment is joint and several.

(Which were all the proceedings had in the above-entitled cause.)

PETITIONER'S EXHIBIT "C"

ADMINISTRATIVE REGULATIONS
STATE OF ILLINOIS
DEPARTMENT OF CORRECTIONS
ADULT DIVISION

Section Number 845
Effective Date: February 1, 1975
Supersedes A. R. 845
Dated: February 15, 1972

Subject: Grievance Procedures for Residents

I. POLICY OF DEPARTMENT: To provide an opportunity for residents to air and seek resolution to complaints, problems and grievances which they have not been able to resolve through other avenues available at the institution or facility. Such a grievance procedure ensures the involvement of active local and departmental administration with individual residents' problems, and that all residents are treated in an equitable manner.

II. EXPLANATION:

A. As a matter of policy, the Chief Administrative Officer of each Adult Division institution or facility shall install locked mailboxes in all cellhouses, dormitories and residential units into which residents may place written complaints and grievances designated for the Chief Administrative Officer or the Chairman of the Institutional Inquiry Board. All communications placed in these boxes by residents are to be collected daily and routed directly to the addressees.

B. Each Chief Administrative Officer shall appoint three employees to serve on the Institutional Inquiry Board to attempt to resolve problems, complaints and grievances that residents have been unable to resolve through normal channels. One of these employees shall be designated as Chairman of the Inquiry Board. The Chief Administrative Officer shall also appoint several alternate members who may serve in the absence of a regularly-appointed Board member. At least one member of every such Inquiry Board shall be a superior officer of lieutenant rank or above, and at least one member shall be a program services staff member.

C. No employee directly responsible for the condition or action being grieved may sit on the Inquiry Board that hears that particular case.

D. The Institutional Inquiry Board shall meet at least weekly, providing one or more problems, complaints, or grievances have been filed with the Chairman of the Board.

E. A resident must have an opportunity to appear before the Institutional Inquiry Board, and the Board shall have the right to summon any other witnesses — residents or staff — it deems appropriate.

F. The Institutional Inquiry Board shall file a written report regarding its findings and recommendations with the Chief Administrative Officer within 10 working days after the complaint is received by the Chairman of the Inquiry Board.

G. The Chief Administrative Officer or his designee shall, after evaluating the Inquiry Board's report, advise the resident in writing as to what action, if any, he has taken or intends to take within five calendar days after receiving the Board's report. Copies of the

resident's letter to the Board, copies of the Board's report to the Chief Administrative Officer, and copies of the Chief Administrative Officer's response to the resident shall be maintained for at least one year and shall be available to the Administrator of Institution Services and/or the Director of Corrections upon request.

H. If, after receiving the official response from the Chief Administrative Officer, the resident still feels that the problem, complaint or grievance has not been resolved to his satisfaction, he may appeal in writing to the Director of Corrections.

I. The Director of Corrections and/or his designee will review all such complaints, problems or grievances submitted. If, after reviewing all the reports from the Institutional Inquiry Board and the local administration, the Director feels that the case is without merit, he will so advise the resident in writing.

J. If the Director is of the opinion that the case has merit or that further investigation of the complaint, problem or grievance is in order, he will refer the matter to the Administrative Review Board.

K. A three-member Administrative Review Board shall be appointed by the Director, and at least one member of the Board shall be an individual not employed by the agency.

L. The Administrative Review Board will meet as frequently as necessary and may schedule hearings at Adult Division institutions. When such hearings are scheduled, the Board shall have the authority to call witnesses before it — residents and staff.

M. The Administrative Review Board shall file with the Director of Corrections a written report which shall contain the Board's findings and recommendations.

N. The Director will make a final determination and so advise the resident in writing.

O. Residents of Adult Division institutions and facilities must be informed of these procedures in writing by the Chief Administrative Officer.

P. Under no circumstances may any disciplinary action be taken against a resident for using the procedures established herein.